

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EUGENE B. GARVIE,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

CASE NO. 2:21-cv-00218-RSM-BAT

ORDER OF DISMISSAL

This matter is before the Court on the Report and Recommendation (“R&R”) of the Honorable Brian A. Tsuchida, United States Magistrate Judge. Petitioner sought a writ of mandamus directed to the Washington State courts. Judge Tsuchida recommends dismissal of the action because the Court is without power to grant the relief requested:

Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 106 (1984) (11th Amendment prohibits federal district court from ordering state officials to conform their conduct to state law). Thus, a petition for mandamus to compel a state official to take or refrain from some action is frivolous as a matter of law. *Demos v. U.S. District Court*, 925 F.2d 1160, 1161 72 (9th Cir.1991) (explaining “to the extent that [petitioner] attempts to obtain a writ in this court to compel a state court to take or refrain from some action, the petitions are frivolous as a matter of law”); *Robinson v. California Bd. of Prison Terms*, 997 F. Supp. 1303, 1308 (C.D.Cal.1998) (federal courts are without power to issue writs of mandamus to direct state agencies in the performance of their duties).

Dkt. #7 at 3.

1 Petitioner did not object to the R&R. Instead, Petitioner filed a substantially similar
2 petition—likewise seeking a writ of mandamus directed to the Washington State courts—with the
3 United States Court of Appeals for the Ninth Circuit and the Ninth Circuit provided this Court
4 with notice of the filing. *See* Dkt. #8; *Garvie v. U.S. District Court, W.D. Wash.*, No. 21-70756
5 (9th Cir.). Because Petitioner did not object to entry of the R&R and because the Court does not
6 believe that it was divested of jurisdiction by the filing of Petitioner’s substantially similar writ in
7 the Ninth Circuit, the Court finds it prudent to enter this Order.

8 Having reviewed the Report and Recommendation of the Honorable Brian A. Tsuchida,
9 United States Magistrate Judge, and the remaining record, the Court finds and ORDERS:

- 10 (1) The Court ADOPTS the Report and Recommendation (Dkt. #7).
11 (2) The case is dismissed with prejudice.
12 (3) The Clerk is directed to send copies of this Order to the parties and to Judge
13 Tsuchida.

14 Dated this 1st day of April, 2021.

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18 RICARDO S. MARTINEZ
19 CHIEF UNITED STATES DISTRICT JUDGE
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